TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 552.

THE UNITED STATES, APPELLANT,

vs.

JOHN M. ALLRED.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 27, 1893.

(15358.)

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1744

1 In the Court of Claims.

JOHN M. ALLRED
v.
THE UNITED STATES. } No. 17687.

I.—*Petition filed June* 25, 1892.

To the Honorable Judges of the Court of Claims:

Your petitioner, John M. Allred, a citizen of the United States, and a resident of Jasper, in the State of Georgia, respectfully shows:

That from the 28th day of May, 1889, to the 31st day of March, 1892, he was a commissioner of the circuit court of the United States for the northern district of Georgia, duly qualified and acting.

That during said time he issued his warrants for the arrest of
2 various persons in said district for a violation of the laws of the United States on complaints duly sworn to and approved as required by rule of court; that he issued subpœnas in said cases for witnesses to testify on behalf of the United States; that the warrants and subpœnas were duly executed by the United States marshal, and where the defendants and witnesses were brought before him for examination the criminal charges were heard and disposed of by him according to the law and the evidence.

Your petitioner made up his accounts for said services, and charged the fees authorized by sections 847 and 828 of the Revised Statutes; that said accounts were duly verified and presented to the United States court for its approval in the presence of the district attorney, and an order approving the same as being just and in accordance with law was entered of record.

That said accounts were then presented to the accounting officers of the United States Treasury Department for payment, and they refused payment of fees for the following services, as per Exhibit "A" herewith attached; and although payment of said amount has been repeatedly demanded, yet no part of the same has been paid to him, nor to any one for him, nor has any part of the same been allowed to him in any way as a credit or set-off by any officer or department of the United States; but, on the contrary, allowance and payment thereof has been refused.

Your petitioner further shows that no assignment or transfer of said claim, or any part thereof, has been made by him, and that he is the lawful owner thereof.

Wherefore your petitioner prays judgment against the defendant for $365.70.

JOHN M. ALLRED.

By his attorney.
CHARLES C. LANCASTER.

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EXHIBIT A.

The United States of America, Dr., to John M. Allred, a commissioner of the circuit court of the United States for the northern district of Georgia, for services rendered on behalf of the United States in various criminal cases from May 28, 1889, to March 31, 1892, to wit:

1. For entering on docket the judgment or final disposition of case, one folio each, at 15 cents each, disallowed, as follows:

Report 115,567, item 5	$	.45
" 117,067, item 1		4.65
" 118,612, item 2		8.55
" 120,394, item 1		7.65
" 122,779, item 5		7.50
" 126,709, item 14		5.70
" 128,252, item 2		1.80
" 130,314, item 1		5.10
" 132,847, item 14		6.60
" 134,578, item 1		2.70
" 137,422, item 2		2.85
		$53.55

2. For making transcript of proceedings in various cases, as required by rule of court, at 15 cents per folio, disallowed, as follows:

Report 117,067, item 6	$	2.10
" 118,612, item 5		10.80
" 120,394, item 13		9.75
" 122,779, item 7		4.50
" 126,709, item 5		8.10
" 130,314, items 3, 4		7.50
" 132,847, items 3, 7		13.50
" 134,578, item 8		2.25
" 137,422, item 4		3.75
		$62.65

4 3. For hearing and deciding on criminal charges in various cases where the proceedings consisted of either taking bail and passing on the sufficiency thereof, if tendered, and if not tendered, committing the defendant to jail, 6 days, at $5 per day, disallowed, as follows:

Report 117,067, item 5	$	15.00
" 120,394, item 8		5.00
" 132,847, item 8		5.00
" 137,422, item 8		5.00
		$30.00

4. For issuing separate warrants of arrest for certain defendants charged with separate and distinct offenses committed at different times and places, disallowed, as follows:

Report 118,612, items 7 to 12	$	30.35
" 120,394, item 14		24.60
" 132,847, item 10		3.50
		$67.10

5. For drawing reports of attendance and mileage of witnesses and orders for marshal to pay in duplicate, in excess of 60 cents in each case, and administering oath to witnesses as to attendance and mileage, at 10 cents each, disallowed, as follows:

Report 118,612, item 13	$	2.45
" 120,394, items 15, 16		3.40
" 126,709, item 8		1.40
" 130,314, item 6		1.05
" 132,847, items 1, 2		13.70
" 134,578, items 2, 11		7.20
" 137,422, item 3		4.80
		$36.00

6. For making copy of each subpœna for marshal to serve on the witness, at 10 cents per folio, with certificate, at 15 cents, disallowed, as follows:

Report 120,394, item 4	$	17.55
" 132,847, item 5		6.80
		$21.35

7. For issuing warrant of commitment of defendant to jail for further examination in default of bail, entering return of marshal and filing same, at $1.25 each, disallowed, as follows:

5 Report 120,394, items 6, 7 ..... $2.50
" 134,578, item 12 ..... 1.35
" 137,422, item 6 ..... 1.45
$5.30

8. For making report to clerk of court and Commissioner of Internal Revenue of cases heard and disposed of, as required by rule of court, at 15 cents per folio, disallowed, as follows:

Report 126,709, item 16 ..... $3.90
" 132,847, items 16, 17, 18 ..... 3.30
$7.20

9. For administering oaths to deputy marshals to verify their accounts of service, as required by the Attorney-General and accounting officers of the Treasury, at 10 cents each, and drawing jurats to same, at 15 cents, disallowed, as follows:

Report 130,314, item 1 ..... $5.25
" 132,847, items 4, 19, 20 ..... 11.75
" 134,578, item 1 ..... 1.25
$18.25

10. For making entries on the docket in various cases, as required by rule of court, at 15 cents per folio, disallowed, as follows:

Report 130,314, items 1, 2 ..... $16.35
" 132,847, item 12 ..... 26.10
" 134,578, item 1 ..... .75
$43.50

11. For filing and entering 131 separate papers filed in various cases, at 10 cents each, disallowed, as follows:

Report 132,847, item 15 ..... $13.10

12. For administering oaths to witnesses to testify in various cases, at 10 cents each, disallowed, as follows:

Report 137,422, item 7 ..... $4.40

Total amount claimed $365.70

6 *District of Columbia:*

Before me, a notary public in and for the District of Columbia, personally appeared Charles C. Lancaster, who, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition, and that he is authorized by warrant of attorney, duly executed by said petitioner and filed herewith, to verify said petition; that petitioner is justly entitled to the amount therein claimed from the United States after allowing all just credits and set-offs, and that the facts therein stated are true to the best of his knowledge and belief.

CHARLES C. LANCASTER.

Subscribed and sworn to before me this 25th day of June, 1892.

[SEAL.] A. S. TAYLOR,
Notary Public.

7 II.—*Traverse filed February 15, 1893.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

8 III.—*Findings of fact and conclusion of law.*

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

The claimant, John M. Allred, was a commissioner of the circuit court of the United States for the northern district of Georgia from May 28, 1889, to March 31, 1892, duly qualified and acting.

II.

During said period he made up his accounts for services, duly verified, and presented the same to the United States court for approval in the presence of the district attorney, and an order approving the same as being just and according to law was entered of record. Said accounts were then presented to the accounting officers of the United States Treasury Department for payment. Part was paid, but payment of the items embraced in Finding 3 was refused.

III.

(1) For entering on warrant the judgment of final disposition of the case, as required by rule of court, one folio each, at 15 cents each, $53.55.

Rule 6 of the circuit court requiring this service is as follows: * * * "And, after holding an examination, he must enter in the blank on the back of the warrant his final action, in which, if bound or committed, he shall specify the particular offense or offenses for which the party is held."

(2) For making transcript of proceedings in various cases, as required by rule of court, to be sent up to court, at 15 cents per folio, $62.65.

(3) For hearing and deciding on criminal charges in various cases where the proceedings consisted of taking bail and passing on the sufficiency thereof, six days, at $5.00 per day, $30.00.

(3) For hearing and deciding on criminal charges in various cases where the proceedings consisted of taking bail and passing on the sufficiency thereof, six days, at $5.00 per day, $30.00.

(4) For issuing separate warrants of arrest for certain defendants charged with separate and distinct offenses committed at different times and places, at $1.00 each, entering return, 15 cents, and filing, 10 cents, $67.40.

(5) For drawing reports of attendance and mileage of witnesses and orders for the marshal to pay each witness in duplicate, in excess of 60 cents in each case, and administering oath to witnesses, as to attendance and mileage, at 10 cents each, $37.00.

9 (6) For making copy of each subpœna for marshal to serve on the witness, at 10 cents per folio, with certificate, at 15 cents each, as required by rule of court, $24.35.

(7) For issuing warrant of commitment of defendants to jail for further examination in default of bail, entering return of marshal and filing same, at $1.25 each, $5.30.

The jailer would not receive a prisoner without a warrant of commitment, and the marshal had no place to confine the prisoner outside of the jail.

(8) For making report to clerk of court and Commissioner of Internal Revenue of cases heard and disposed of under the internal-revenue laws, as required by rule of court, at 15 cents per folio, $7.20.

(9) For administering oaths to deputy marshals to verify their accounts of service, as required by the Attorney General and accounting officers of the Treasury, at 10 cents each, and drawing jurats to same, at 19 cents, $18.25.

(10) For making entries on the docket in various cases, consisting of name of affiant, his official position, if any, date of issuing warrant, name of defendant and witnesses, and final disposition of case, as required by rule of court, at 15 cents per folio, $43.50.

(11) For filing and entering 131 separate papers filed in various cases, at 10 cents each, $13.10.

(12) For administering oaths to witnesses to testify in various cases, at 10 cents each, $4.40.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court determines as a conclusion of law that the claimant should recover, except for item 5 of Finding III, the sum of three hundred and twenty-nine dollars and seventy cents ($329.70).

BY THE COURT.

The court filed no opinion in this case.

10 IV.—*Judgment of the court.*

JOHN M. ALLRED
v.
THE UNITED STATES. } No. 17687.

At a Court of Claims held in the city of Washington on the first day of May, A. D., 1893, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, John M. Allred, do have and recover of and from the United States the sum of three hundred and twenty-nine dollars and seventy cents ($329.70).

BY THE COURT.

11 V.—*Application for and allowance of appeal.*

JOHN M. ALLRED
v.
THE UNITED STATES. } No. 17687.

From the judgment rendered in the above-entitled cause on the first day of May, 1893, in favor of claimant, the defendants, by their Attorney-General, on the 20th day of July, 1893, make application for and give notice of an appeal to the Supreme Court of the United States.

HOLMES CONRAD,
Asst. Atty. General.

Filed and allowed in vacation July 20, 1893.

WILLIAM A. RICHARDSON,
Chief Justice.

12 In the Court of Claims.

JOHN M. ALLRED
vs.
THE UNITED STATES. } No. 17687.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the judgment of the court, of the application of defendants for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 24th day of July, 1893.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsed on cover:) Case No. 15358. Term No. 552. Court of Claims. The United States, appellant, vs. John M. Allred. Filed July 27th, 1893.

Office Supreme Court, U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

UNITED STATES, APPELLANTS,
v.
JOHN M. ALLRED.
} No. 552.

APPEAL FROM THE COURT OF CLAIMS.

APPELLANTS' BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

UNITED STATES, APPELLANTS,
v.
JOHN M. ALLRED. } No. 552.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT OF CASE.

This is a case from the Court of Claims where the appellee set up in his petition that the accounting officers of the Treasury had disallowed items of his accounts of fees for services as commissioner of the circuit court of the United States for the northern district of Georgia, charged by him between May 28, 1889, and March 31, 1892; whereupon he brought suit for the amounts disallowed. The court below gave judgment in his favor for the amount of various items and refused to allow one item. The case is appealed by the Attorney-General on

account of errors in the allowance by the lower court of particular items mentioned in the following assignment of errors :

ASSIGNMENT OF ERRORS.

(1) The court erred in giving judgment for the sum stated in item 1 of finding 3.

(2) The court erred in giving judgment for the sum stated in item 2 of finding 3.

(3) The court erred in giving judgment for the sum stated in item 6 of finding 3.

(4) The court erred in giving judgment for the sum stated in item 8 of finding 3.

(5) The court erred in giving judgment for the sum stated in item 9 of finding 3.

(6) The court erred in giving judgment for the amount stated in item 10 of finding 3.

ARGUMENT.

I.

It will be observed that in four of the assignments of error (viz. the 1st, 2d, 3d, 4th, and 6th) the fees are claimed to be justified only by the fact that some rule of court required them. These rules seem to relate to the manner in which the records of the commissioner shall be made, to reports by the commissioner to the Commissioner of Internal Revenue and district attorney, and to other acts of the commissioner as a separate officer, and not directly relating to the judicial functions of the circuit court.

We deny the authority of the circuit court to give orders to the commissioners in this way.

The appellee has mistaken the nature of the office of United States commissioner, assuming that the court has authority to order the commissioner as it orders its own clerk; that the commissioner is bound to obey, and hence, according to the decision in the case of *United States* v. *Van Duzee* (140 U. S., 169), has a right to charge fees not prescribed by law.

The position of the commissioner, however, is wholly different from that of clerk, and owing to the absence of an opinion by this court clearly defining his relations with the circuit court, and to the somewhat conflicting decisions and dicta of other courts, we think it well to summit some observations upon the nature and history of the office of United States commissioner.

The duties of that office are prescribed by the Revised Statutes substantially as follows:

> They, in common with judges of the Federal and State courts similarly authorized to make arrests for offenses against the United States, shall have the like authority to hold to security of the peace and good behavior as any judge or justice of the peace of the respective States. (R. S., 727.)
>
> In common with district and circuit courts, they shall have power to carry into effect the award of arbitration or decree of any foreign consul in cases arising between captains and crews of vessels of the consul's nation. They may issue all remedial process, mesne and final, to carry into effect such award, etc., and enforce obedience by imprisonment, etc. The marshals shall serve all such process, etc., under the authority of said courts and commissioners. (R. S., 728.)

Bail and affidavits, when required or allowed in any civil cause in any circuit or district court, may be taken by them with the same effect as if taken before any judge of said courts. (R. S., 745.)

For any crime or offense against the United States the offender may, by any justice or judge of the United States, or any commissioner of the circuit court to take bail, or chancellor, judge of a supreme or superior court, etc., justice of the peace, or other magistrate of a State where he may be found and, *agreeably to the usual mode of process against offenders in such State*, be arrested and imprisoned or bailed for trial before such court of the United States as has jurisdiction of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of witnesses for their appearance to testify in the case. (R. S., 1014.)

They may discharge poor convicts imprisoned for nonpayment of fines where, after hearing and determining the matter, it appears that the said convicts are imprisoned for non-payment of the fines. (R. S., 1042.)

In all cases where oaths or acknowledgments may, under Federal laws, be taken before justices of the peace, they may be taken before notaries and commissioners of the circuit courts with the same effect. (R. S., 1778.)

District attorneys, marshals, and deputy marshals, the commissioners appointed by the circuit and Territorial courts, with power to arrest, imprison, or bail offenders, are authorized and required to institute prosecutions under the laws relating to crimes against the elective franchise and civil rights of citizens, and to cause offenders to be arrested and imprisoned or bailed for trial before the court having cognizance of

the offense. Their powers and duties shall be the same as in the case of other offenses. They may appoint suitable persons to execute all such warrants and other process as they may issue in the lawful performance of their duties, which persons may call the bystanders and posse comitatus, etc. Every marshal or deputy marshal shall obey and execute all warrants and other process, etc. (R. S., 1982–1985.)

The judges and commissioners may issue a search warrant, authorizing any internal revenue officer to search premises, where a fraud on the revenue has been or is being committed. (R. S., 3462.)

Where foreign consuls, etc., have by treaty exclusive jurisdiction of disputes between masters and crews of vessels of their nations, judges and commissioners shall issue a warrant under certain circumstances, cause the arrest of the person complained of by the consul and commit him to prison, if the case, upon examination, proves to be one of such exclusive jurisdiction. (R. S., 4079–4081.)

A similar provision is made in case of deserting foreign seamen. (R. S., 5280.)

When the wages of any seaman of a vessel are not paid, or there is a dispute touching wages, the district judge, or if he is at a distance or absent, any proper justice of the peace or commissioner of the circuit court, may summon the master to appear before him, to show cause why process should not issue against such vessel according to the course of admiralty courts, and to answer for the wages. (R. S., 4546.)

In bankruptcy proceedings, evidence or examination may be taken, or held before the court (district court), or a register in bankruptcy, *viva voce*, or in writing, before a commissioner of the circuit court, or by affidavit, or on commission, and the court may

direct a reference to a register in bankruptcy, or other suitable person, to take and certify such examination, etc. (R. S., 5003.)

Creditors of the bankrupt shall prove their debts before a register in bankruptcy, or a commissioner of the circuit court; but proof taken before a commissioner shall be subject to review by the register of the court (district court). (R. S. 5076.)

Commissioners may, in common with judges, issue warrants for and examine persons charged with being fugitives from justice. Upon hearing evidence and believing it sufficient to sustain the charge under the proper hearing, they shall certify the same, together with a copy of all the testimony, to the Secretary of State, that a warrant may issue for extradition. Certain testimony receivable in the tribunals of the foreign courts concerned shall be received in evidence. (R. S., 5270–5271.)

Such have been the powers of the office in question. They are prescribed by law, and in many cases are conferred in the same language upon judges of the circuit and district courts.

The appointment to the office is as follows:

Each circuit court may appoint, in different parts of the district in which it is held, so many discreet persons as it may deem necessary, who shall be called "commissioners of the circuit courts," and shall exercise the powers which are or may be *expressly conferred by law* upon commissioners of circuit courts. (R. S., 627.)

This is in accordance with the constitutional provision that the appointment of inferior officers may be vested in the President alone, the courts of law, or heads of departments. We are not at present much accustomed to the

mode of appointment by courts of officers not court officers, but this provision of law grew out of one not much younger than the Constitution itself.

Now, we submit that it is not the intention of a single one of the laws quoted to confer upon the court which appoints these magistrates the power to prescribe their duties. Their powers are emphatically such as are expressly conferred by law. They are nowhere referred to the court for authority to do an act, or directed to obey the court, or treated as officers of the court. But for their name, not a syllable in these laws can be said to describe them or speak of them as being officers of the court, and where this title is given them it is accompanied by the declaration that their powers and duties are expressly conferred by law, as if to leave no doubt that they are independent officers with statutory duties and not mere tools and servants of the courts.

Moreover, they have no more to do with the circuit court appointing them than with consuls, or district courts, or the Secretary of State, or circuit courts other than those appointing them.

Not only are they not made subject to the orders of the circuit court, which appoints, but they issue orders in many cases as though equals of the circuit courts, and where they are referred elsewhere than to the language of the laws of Congress, or treaties, or the course of admiralty courts, in matters concerning their mode of procedure, they are referred to the laws of the State in which they act. They are to proceed according to the usual mode of process in the State, not according to the rules or orders of any court.

The history of the office confirms this view of it. As we now know it, the office may be said to date from 1812. Before that time there were the following provisions of law, which may be said to have led up to its creation:

Section 33 of the judiciary act provided (1 Stat., 91)—

> That for any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found, agreeably to the usual mode of process against offenders in such State and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offense. And copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses to appear and testify in the case.

Section 4 of the act of March 2, 1793 (1 Stat., 334), provided—

> That bail for appearance in any court of the United States, in any criminal cause in which bail is by law allowed, may be taken by any judge of the United States, any chancellor, judge of a supreme or superior court, or chief or first judge of a court of common pleas of any State, or mayor of a city in either of them, and by any person having authority from a circuit court. * * * which authority, revocable at the discretion of such court, any circuit court * * * may give to one or more discreet persons, learned in the law, in any district for which such court is holden, where, from the extent of the district and remoteness of the parts from the usual residence of any of the before-named officers, such provision shall, in the opinion of the court, be necessary.

In 1812 Congress enacted (2 Stat., 679)—

> That it shall be lawful for the circuit court of the United States, to be holden in any district in which the present provision, by law, for taking bail and affidavits in civil causes (in cases where such affidavits are, by law, admissible), is inadequate, or, on account of the extent of such district, inconvenient, *to appoint* such and so many discreet persons, in different parts of the district, as such court shall deem necessary, to take acknowledgments of bail and affidavits; which acknowledgments of bail and affidavits shall have the like force and effect as if taken before any judge of said court; and any person swearing falsely in and by any such affidavit, shall be liable to the same punishment as if the same affidavit had been made or taken before a judge of said court.

In 1842 it was provided by Congress (5 Stat., 516)—

> That commissioners who now are, or hereafter may be, appointed by the circuit courts of the United States to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes, *shall and may exercise all the powers that any justice of the peace*, or other magistrate, of any of the United States may now exercise in respect to offenders for any crime or offence against the United States, by arresting, imprisoning, or bailing the same, under and by virtue of the thirty-third section of the act of the twenty-fourth of September, Anno Domini seventeen hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States;" and who shall and may exercise all the powers that any judge or justice of the peace may exercise under and in virtue of the sixth section of the act passed the twentieth of July, Anno Domini seventeen hundred and ninety, entitled "An act for the government and regulation of seamen in the merchant service."

We have seen how many important powers have been added to the office since then. Not once in its history, from 1812 to this time, more than in the present laws concerning it, do we see a suggestion that the commissioner is anything else than an independent magistrate, the justice of the peace and examining magistrate of the Federal jurisdiction. He may, of course, take a reference from a court of equity under Equity Rule 67, or from a court of admiralty under Admiralty Rule 44, or from some law court wherein the facts are to be similarly ascertained. This he does under a special commission or order of reference, which appears in his accounts and is the same as would issue to any outsider. If he accepts the reference, which he is only too glad to do, he acts as a special commissioner for the particular case and of the district, circuit, or other court making the reference. In *United States* v. *Schumann* (2 Abb., 523, 525), Mr. Justice Field, after referring to the laws creating the office of commissioner, said:

> He is thus made a magistrate of the Government, exercising functions of the highest importance to the administration of justice. He is an examining and committing magistrate, bound to hear all complaints of the commission of any public offense against the laws of the United States in his district, to cause the offender to be arrested, to examine into the matters charged, to summon witnesses for the Government and for the accused; and to commit for trial or to discharge from arrest according as the evidence tends or fails to support the accusation. For the faithful discharge of his duty in these particulars he alone is accountable. He has no divided responsibility with any other officer of the Government; nor is he subject to any other's control.

In the case of *United States* v. *Rundlett* (2 Curt., 41, 43), Mr. Justice Curtis, considering the question whether a commissioner had the power to recognize a defendant to appear before himself, justices of the peace in the State in which he acted being authorized by the State procedure to do so, said:

> My opinion is that it was the intention of Congress by these words, "agreeably to the usual mode of process against offenders in such State," to assimilate all the proceedings for holding accused persons to answer before a court of the United States to the proceedings had for similar purposes by the laws of the State where the proceedings should take place; and, as a necessary consequence, that the commissioners have power to order a recognizance to be given to appear before them in those States where justices of the peace, or other examining magistrates, acting under the laws of the State, have such power; as they have in New Hampshire, by the Revised Statutes (p. 564, par. 8). It is, perhaps, admissible to consider the taking of a recognizance to be strictly and literally within the meaning of the word process. (See *Beers* v. *Houghton*, 9 Peters, 329; *United States* v. *Knight*, 14 Peters, 301.) But if not so, I consider the words "mode of process," as used in this law, to be synonymous with mode of proceeding, and to include power to let to bail. This must be so, because the law expressly says the prisoner is not only to be arrested and imprisoned, but bailed, agreeably to the usual mode of process in the State; and though this refers to his being bailed to appear and answer before the court, it shows that the words "mode of process" were not confined to the form of the warrant or mittimus, but were used in the larger sense above mentioned.

In *Ex parte Van Orden* (3 Blatch. 168) the court say:

> No provision is made in that act, or in any other, subjecting his proceedings to the control or review of this court, nor are his functions declared to be subordinate to the authority of any other tribunal. The court in making the appointment of commissioners fulfills an agency imposed on it by Congress, and no more acquires thereby a supervisory authority over him than the President or the Senate has over judges appointed by them. He is not even an officer of the court.

In addition to these cases decisions and dicta of the courts are to be found in the following cases, and attention is respectfully called to the pages indicated: *United States* v. *Case*, 8 Blatch., 250; *United States* v. *Scoggins*, 3 Woods, 529, 532; *In re Eaves*, 30 Fed. Rep., 21, 24; *United States* v. *Ebbs*, 10 Fed. Rep., 369, 373; *United States* v. *Harden*, 10 Fed. Rep., 802, 803, 806; *Ex parte Perkins*, 29 Fed. Rep., 900, 908; *In re Mason*, 43 Fed. Rep., 510).

These decisions and dicta, read in the light of the statutes and the history of the office, show that the subject has in many cases been treated without concentrating such light; that some of the courts took too much for granted and were misled by names and appearances. In other cases we see the truth stated, but the subject treated less exhaustively than could be wished. It is respectfully suggested that a luminous opinion by this court is needed to place in his true position this interesting and important magistrate.

In delivering such an opinion it will doubtless be determined that, no term to the office having been prescribed, the incumbent holds during good behavior, because he decides, judicially, rights of persons and property, the principle that the power to appoint involves the power to remove being no more applicable to him than to any other person exercising the judicial power of the United States; that, in his method of procedure in the performance of his duties as an examining magistrate, he is to look to the laws of the States and the acts of Congress in the same manner as the Federal courts commonly do, and that, as to the manner of conducting affairs in his office, he takes his orders from the law, and not from a judge.

II.

As for assignment of error number 5 (item 9) the charge made is objected to for reasons following:

The charge is: "For administering oaths to deputy marshals to verify their accounts of service as required by the Attorney-General and accounting officers of the Treasury, at 10 cents each, and drawing jurats to same, at 19 cents, $18.25."

The power of the Attorney-General to supervise the accounts of certain officers and of the accounting officers to audit them can not by any argument include a power to dictate the acts and proceedings out of which the accounts arise. They can not, therefore, require commissioners to administer oaths to deputy marshals by way of supervising or auditing the accounts of commissioners. This court seems to have thought that, even if they could, the marshal himself would have to pay the expense

of perfecting his account as required by law or lawful regulation. The fact that such perfecting of the account prevents spurious, unjust, or improper accounts from passing the accounting officers does not alter the case. *United States* v. *Van Duzee* (140 U. S., 169). Not all fees of commissioners are payable by the Government. (R. S., 856, 984.)

In the Van Duzee Case (p. 171) this court decided that the taking of the oaths of office of various officers and the execution of proper bonds is not chargeable to the United States, "since it is the duty of persons receiving appointments from the Government to prepare and tender to the proper officer the oaths and bonds required by the law." And again, on p. 172, the court holds that it is the duty of any officer required to present an account verified by an oath or affidavit to present it with such oath, and that the right to earn fees by a clerk with reference to the allowance of that account does not commence until the subsequent steps. These holdings are entirely in accordance with the view that if the Government is liable at all for the expense of taking the oaths necessary to a marshal's account, whether the oath of the marshal himself or that of his deputy, it can only be liable to the marshal therefor, as one of his expenses. He is required to present his account in proper form to be passed upon, and there is no distinction in principle between the expense incurred in the purchasing of the paper on which it is written, in the hiring of a clerk to write it out, and in the payment of a fee to a notary public, court commissioner, or any other officer authorized to administer to him the attached oath.

If the Government should pay this expense it should pay it only to the marshal or other officer who incurs it, otherwise there is great peril of duplication. The auditing of the marshal's accounts by one set of clerks, the commissioner's accounts by another, and clerk's accounts by still another makes it practically impossible to discover whether the marshal shall have looked upon himself as indebted to the commissioner administering the oath to his account and shall have included it as a disbursement in his accounts, while at the same time the commissioner may have added it to the fees for which he presents a bill. The fact also that this service may be rendered to the marshal not alone by a United States officer—the commissioner or clerk—but also by any State officer empowered by law to administer oaths and who would have no right to present a bill to the United States, is confirmatory of the contention that the Government is not liable directly to the officer administering the oath, even though it may be to the marshal or other officer who has to incur the expense.

III.

In addition to what has been said in connection with the nature of the office of commissioner and the supposed right of courts to regulate its duties, it may be well to add:

(*a*) Docket fees being prohibited by law, item 1 (assignment 1), which appears in the petition as "entering on the docket the judgment, etc.," and in the findings to be entering on the back of the warrant the final action, in which, if the defendant be bound or committed, is specified the offense or offenses, and item 10 (assignment 6) seems to be unlawful

as fees for docket entries. The entry on the warrant can serve no purpose but that of a docket entry. The commissioner keeps the warrant. Neither the appointing court nor the one having jurisdiction of the offense ever sees it. Certainly Congress did not intend to have a docket or partial docket kept at public expense, whether in a book or on a slip of paper, or to pay for docket entries and refuse to pay for a docket. There is no "docket fee" in R. S. 828, but a fee for "making dockets and indexes, issuing venire, taxing costs, and all other services on the trial or argument of a cause," etc.; and while Congress intended to destroy the effect of the Wallace decision (116 U. S. 400), we see nothing in that course to give a narrow or technical meaning to the words "docket fees."

The provision of law likening the fees of a commissioner to those of a clerk of court does not warrant a single distinct act by the commissioner, whether of making entries or anything else. It nominally prescribes the schedule of fees for acts similar to those of the clerk when required or authorized by law to be performed, but really gives like fees only in the case of "issuing any warrant or writ," the words added "or for any other service" being restrained by a rule of construction to practically identical services with such issuing of warrants or writs. Congress treats the docketing of the case in a commissioner's court, which is not a court of record, as of no importance to the Government and for that reason expressly forbids all "docket fees." Clerks get no per folio fee for docket entries, and it is, we think, impossible to point out any authority of law for giving the commissioner such a fee, unless the rule of court constitutes such legislation. Even

if the rule of court can compel a commissioner to keep a docket it can not give him a fee therefor against the express prohibition of the statute.

(*b*) The transcripts of proceedings mentioned in item 2, (assignment 2) as sent up under rule of court, are clearly superfluous. The court having jurisdiction of the offense gets copies of the process (warrant, or other writ), where the accused is held for trial, together with the recognizances of the witnesses to appear against him, under section 1014 of the Revised Statutes. These answer all purposes and are, at all events, all that Congress has seen fit to require. If the accused is not held for trial, but discharged, the courts have nothing to do with the matter one way or another, and no interest in the proceedings.

(*c*) Item 6 (assignment 3) seems to be objectionable for the reason given by the Court of Claims in *Martin* v. *United States* (26 C. Cls. R., 167). The original subpœna is what is served, and if a copy is given it requires no certificate, being a mere memorandum.

In conclusion, we have to say that we have by no means failed to consider the various decisions of this court in similar cases, particularly those reported in 140 and 116 U. S., and have sought to avoid raising again any question there disputed and determined.

Respectfully submitted.

J. E. DODGE,
Assistant Attorney-General.
CHARLES W. RUSSELL,
Assistant Attorney.

Office Supreme Court U. S.
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NOV 20 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 552.

THE UNITED STATES, APPELLANT,

vs.

JOHN M. ALLRED, APPELLEE.

Appeal from the Court of Claims.

BRIEF FOR APPELLEE.

CHARLES C. LANCASTER,
Counsel for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

THE UNITED STATES, *Appellant*,
vs.
JOHN M. ALLRED, *Appellee*. } No. 552.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

Fees of a Commissioner of the Circuit Court of the United States.

The court below found the following facts:

I.

The claimant, John M. Allred, was a Commissioner of the Circuit Court of the United States for the Northern District of Georgia, from May 28, 1889, to March 31, 1892, duly qualified and acting.

II.

During said period he made up his accounts for services, duly verified, and presented the same to the United States court for approval in the presence of the district attorney, and an order approving the same as being just and according to law was entered of record. Said accounts were then presented to the accounting officers of the United States Treasury Department for payment. Part was paid, but payment of the items embraced in Finding III was refused.

III.

(1) For entering on warrant the judgment of final disposition of the case, as required by rule of court, one folio each, at 15 cents each..... $53 55

Rule 6, of the circuit court requiring this service, is as follows: * * * "And, after holding an examination, he must enter in the blank on the back of the warrant his final action, in which, if bound or committed, he shall specify the particular offense or offenses for which the party is held."

(2) For making transcript of proceedings in various cases, as required by rule of court, to be sent up to court, at 15 cents per folio..... $62 65

(3) For hearing and deciding on criminal charges in various cases where the proceedings consisted of taking bail and passing on the sufficiency thereof, six days, at $5.00 per day. $30 00

(4) For issuing separate warrants of arrest for certain defendants charged with separate and distinct offenses committed at different times and places, at $1.00 each, entering return, 15 cents, and filing, 10 cents..... $67 40

(5) For drawing reports of attendance and mileage of witnesses and orders for the marshal to pay each witness in duplicate, in excess of 60 cents in each case, and administering oath to witnesses, as to attendance and mileage, at 10 cents each..... $37 00

(6) For making copy of each subpœna for marshal to serve on the witness, at 10 cents per folio, with certificate, at 15 cents each, as required by rule of court..... $24 35

(7) For issuing warrant of commitment of defendants to jail for further examination in default of bail, entering return of marshal and filing same, at $1.25 each..... $5 30

The jailer would not receive a prisoner without a warrant of commitment, and the marshal had no place to confine the [illegible] outside of the jail.

(8) For making report to clerk of court and Commissioner of Internal Revenue of cases heard and disposed of under the internal revenue laws, as required by rule of court, at 15 cents per folio..... $7 20

(9) For administering oaths to deputy marshals to verify their accounts of service, as required by the Attorney General and accounting officers of the Treasury, at 10 cents each, and drawing jurats to same, at 15 cents..... $18 25

(10) For making entries on the docket in various cases, consisting of name of affiant, his official position, if any, date of issuing warrant, name of defendant and witnesses, and final disposition of case, as required by rule of court, at 15 cents per folio..... $43 50

(11) For filing and entering 131 separate papers, filed in various cases, at 10 cents each..... $13 10

(12) For administering oaths to witnesses to testify in various cases, at 10 cents each..... $4 40"

R., pp. 4 and 5.

Judgment was entered for all the above items, except item 5, which was rejected, and as no appeal has been taken on this item it will not be considered.

ARGUMENT.

The accounts upon which this suit is based were approved by the Court as required by the act of February 22, 1875, 18 Stats., 333. Such approval is *prima facie* evidence of the correctness of the items of these accounts, and in the absence of clear and unequivocal proof of mistake on the part of the court it should be conclusive.

U. S. *vs.* Jones, 134 U. S., 483.
Approved in U. S. *vs.* Ewing, 140 U. S., 142.
U. S. *vs.* Barber, 140 U. S., 177.

Items 1, 2, 6, 8, and 10. These services were specially required by a rule of court, which was binding on the claimant.

U. S. *vs.* Van Duzee, 140 U. S., 177.

Item 3. These per diems are claimed on the authority of—

U. S. *ex.* Jones, 134 U. S., 483.
U. S. *ex.* Ewing, 140 U. S., 142.

Item 4. These services are claimed on the authority of U. S. *ex.* Barber, 140 U. S., 177.

Item 7. These services are claimed on the authority of U. S. *ex.* Ewing, 140 U. S., 142; Code of Georgia, 1882, section 4732, 4742.

During the period when these services were performed, the following regulation of the Department of Justice was in force:

"Every deputy United States marshal is required to certify on oath that the accounts rendered to the United States marshal are correct in each and every particular. See section 782, Revised Statutes, prescribing an oath that he will take only lawful fees. Such certificate must be on the same paper with the account, or, if several accounts are sworn to at the same time, a separate paper may be used, in which case the officer before whom the affidavit is made must fill in, in his own handwriting, the names of the cases in which the services were performed and the total footing of all the vouchers written out in full and in numerals, and the vouchers must be marked 'original' or 'duplicate,' and the duplicate must be a duplicate in fact and not a copy, as provided by section 1 of the act of February 22, 1875." (Registers of the Department of Justice for 1883, p. 163; for 1884, p. 188; for 1886, p. 235.)

The service was performed in compliance with the above regulation and for the benefit of the United States.

The oath required by section 782, Rev. Stats., was the oath of office, but the oath required by the above regulations was to each account of the deputy presented to the marshal. The deputy was not required to go to the expense of this latter oath except by force of the above regulations, which were made for the protection of the United States and not the

deputy marshal. This method of verifying the accounts of the deputy marshals was in pursuance of a regulation of the Department of Justice. The fees are provided by section 828 and 847, Rev. Stats. To deny them is to repudiate the act of the Department of Justice and the accounting officers in prescribing the regulations for the benefiit of the United States.

The fees are clearly allowable under the decision of U. S. *vs.* McDermott, 140 U. S., 151, items 1, 2, 9. The same charges were allowed by the Court of Claims in Bell *vs.* U. S., No. 16,849, decided June 27, 1892, 27 Ct. Cls., 574. No opinion was delivered or appeal taken in this case. Counsel for the defendant in his brief in that case conceded that the fees were lawful on the authority of the McDermott case, *supra*.

Item 11. These papers were separate and distinct papers and were filed in various cases.

The charge is claimed on the authority of—

U. S. *vs.* Barber, 140 U. S., 168.

Item 12. Witnesses must be sworn before they testify, and the fee for administering the oath is authorized by section 847, Rev. Stats.

U. S. *vs.* McDermott, 140 U. S., 151, item 1.
U. S. *vs.* Barber, 140 U. S., 164.

It is submitted that the law of the case and all the precedents are clearly with the appellee, and that this appeal should be dismissed.

CHARLES C. LANCASTER.
Counsel for Appellee.